IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 140 of 2007()

CP.296/1996 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD
CRIME NO. 32/05 OF BADIADKA EXCISE RANGE

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PETITIONER: ACCUSED:

SHANTHA T., W/O. LATE SOMARAJAN,
RESIDING AT PERIYADUKAM, KARADKA VILLAGE,
MULLERIA P.O., KASARAGODE TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE:

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1. EXCISE RANGE OFFICER,
BADIADKA EXCISE RANGE.

2. STATE REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 140 of 2007

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Dated this the 17th day of January, 2007

O R D E R

The petitioner, a woman, faces indictment in a prosecution under Section 55(a) of the Kerala Abkari Act. The alleged offence was committed on 17.12.2005. In the mahazar it is stated that as the petitioner is physically disabled she has not been arrested. Investigation is now complete. Final report has been filed. Cognizance has been taken. Committal proceedings are pending before the learned Magistrate as C.P.No.296 of 2006. The petitioner has receive summons to appear before the learned Magistrate on 3.1.2007. She did not appear on that day. An application was filed. Rejecting that application, non-bailable warrant has been issued against the petitioner.

2. The petitioner is willing to surrender before the learned Magistrate. But she is disabled materially. She is suffering from permanent disability to the tune of 40%. The petitioner, in these circumstances, came to this Court praying that powers under Section

482 Cr.P.C. may be invoked and a direction may be issued to the learned Magistrate not to execute the arrest warrant.

3. The petitioner is willing to surrender before the learned Magistrate. The petitioner apprehends that the offence being one triable exclusively by a Court of Sessions, the learned Magistrate may not consider the application for bail on merits and expeditiously.

4. I have no reason to assume that the learned Magistrate will not consider the application of the petitioner, a disabled person, for bail on merits, in accordance with law and expeditiously. It is submitted that the learned Magistrate had initially issued only summons to secure the presence of the petitioner. In these circumstances I find no merit in the submission that the petitioner's application may not be considered properly by the learned Magistrate. I need only observe that I find no reasons why the petitioner should not be released on bail by the learned Magistrate.

5. This Crl.M.C. is accordingly allowed in part. The petitioner is directed to appear before the learned Magistrate on 30.1.2007. Her application for bail shall be considered by the learned Magistrate on merits

and appropriate orders passed. Till that date the warrant issued against the petitioner shall not be executed.

(R. BASANT)
Judge

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